

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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FREE SPEECH COALITION, INC. et al.,	)	Civil Action No. 2:09-4607
	)	
Plaintiffs,	)	Judge Michael M. Baylson
	)	
v.	)	
	)	CONSENT MOTION TO AMEND
JEFFERSON B. SESSIONS, III <sup>1</sup> ,	)	SCHEDULING ORDER
Attorney General,	)	
	)	
Defendant.	)	

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Defendant hereby respectfully requests, with Plaintiffs' consent, that the Court amend its Scheduling Order of January 25, 2017 so as to extend the current deadline for Defendant to file a response brief in connection with the parties' cross-motions filed on January 23, 2017. Good cause exists for the requested extension, as set forth below:

Following the Third Circuit's decision in *Free Speech Coalition, Inc. v. Attorney General of United States of America*, 825 F.3d 149 (3rd Cir. 2016), remanding Plaintiffs' First Amendment claims in the above-captioned case for reconsideration under strict scrutiny, and pursuant to the Court's Order of December 14, 2016 (ECF No. 240), the parties filed cross motions for entry of judgment on January 23, 2017. *See* ECF Nos. 243, 244. Following a telephonic conference, the Court issued a Scheduling Order on January 25, 2017, whereby Plaintiffs' opening brief would be filed by February 24, 2017; Defendant's response brief would be filed by March 27, 2017; and Plaintiffs' reply brief would be filed by April 17, 2017. *See* ECF No. 245. Plaintiffs filed their opening brief on February 24, 2017. However, Defendant now seeks an extension of its March 27 response deadline due to unanticipated obligations in other cases as well as illness of undersigned

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Attorney General Jefferson B. Sessions, III is substituted in his official capacity as defendant in this case.

counsel.

Specifically, on February 23, 2017, the day before Plaintiffs filed their opening brief, a motion for preliminary injunction with request for expedited consideration was filed in another case recently assigned to undersigned counsel, *American Association of Cosmetology Schools v. DeVos* (“AACCS”), No. 1:17-cv-263 (D.D.C). At the time the case was assigned, there was no indication in the complaint that a preliminary injunction motion would be filed, and the deadline to respond to the complaint was not until April 11, 2017. However, once the preliminary injunction motion was filed, the court in that case ordered a response to be filed by March 7, 2017. Due to a relevant notice issued by the defendant agency in that case on March 6, 2017, undersigned counsel filed an emergency request for an extension of the March 7, 2017 deadline but did not learn that the request was granted until 9:30pm on March 7. Undersigned counsel then was on work-related travel from March 8 to 10, 2017 in connection with a hearing in another case in Salt Lake City, Utah. Since undersigned counsel’s return, she has been out of the office sick much of this week. Meanwhile, on March 15, 2017, the court in AACCS issued an expedited briefing schedule combining further preliminary injunction briefing with summary judgment briefing on the merits, and setting the deadline for the defendant agency’s opening brief for March 29, 2017.

In light of these conflicting obligations and illness, undersigned counsel does not anticipate being able to file Defendant’s response brief by the March 27 deadline. In addition, undersigned counsel will be out of the office due to Passover and related travel from April 5 through 17, 2017, and will then have a summary judgment reply deadline in the AACCS case less than a week later, on April 24, 2017, with a hearing in that case set for April 28, 2017. In order to prepare a thorough response to Plaintiffs’ opening brief, Defendant therefore seeks to extend its deadline in this case

to May 12, 2017. Undersigned counsel for Defendant has conferred with counsel for Plaintiffs, who have indicated that Plaintiffs have no objection to the requested extension to May 12, 2017 under the circumstances and identified a corresponding new deadline for Plaintiffs' reply of June 2, 2017. Accordingly, Defendant respectfully requests that the Court's Scheduling Order of January 25, 2017 be amended as set forth in the attached Proposed Order

March 16, 2017

Respectfully submitted,

CHAD A. READLER

Acting Assistant Attorney General

LOUIS D. LAPPEN

Acting United States Attorney

JOHN R. TYLER

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/s/ Kathryn L. Wyer

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**Certification Pursuant to Local Rule 7.1(b)**

The foregoing Motion is uncontested with respect to the request for an extension and the amended deadlines set forth in the attached Proposed Order.

/s/ Kathryn L. Wyer

KATHRYN L. WYER

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.1.2(8)(b), I hereby certify that the foregoing Motion has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that the foregoing document was served via ECF on counsel of record for plaintiffs in the above-captioned case.

Dated: March 16, 2017

/s/ \_\_\_\_\_  
Kathryn L. Wyer